

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

ANTHONY CANTU AND RONALD LOREDO, on behalf of themselves and a class of those similarly situated,	§	Civil Action No. SA:13-CA-731-H LH
Plaintiffs,	§	Collective Action Pursuant to 29 U.S.C. §216(b)
v.	§	
MILBERGER LANDSCAPING, INC.,	§	Jury Demanded
Defendant.	§	

**PLAINTIFFS' MOTION TO COMPEL AND REQUEST
FOR EXPEDITED CONSIDERATION AND RELIEF**

Plaintiffs file this Motion to Compel and Request for Expedited Consideration and Relief simply to obtain the documents that Defendant has already indicated that it will produce. They show as follows:

On **December 11, 2013**, Plaintiffs served a notice of deposition *duces tecum* pursuant to Rule 30(b)(6) to take place on **January 17, 2014**—four days from today. Upon receipt of a draft of Plaintiffs' notice of Rule 30(b)(6) notice of deposition, the Defendant designated a representative to testify.

Plaintiffs served their notice of deposition to occur on January 17 in anticipation of receiving from the Defendant documents responsive to their discovery well before that day. Plaintiffs had previously served their first set of written discovery consisting of interrogatories and requests for production on the Defendant on **November 19, 2013**. Plaintiffs served a second set of interrogatories on **December 4, 2013**.

On December 20, 2013, the undersigned and counsel for Defendant agreed to extend the deadline up to and including January 6, 2014 for Defendant to respond to all of Plaintiffs' written discovery. During the conversation in which the undersigned agreed to the extension, counsel for Defendant indicated that Plaintiffs' counsel would receive responsive information and documents on January 6. This aspect of that conversation was important since the deposition was scheduled to occur on January 17.

Defendant served by mail its objections and responses to all Plaintiffs' written discovery on January 6, 2014. Defendant's responses to Plaintiff Cantu's First Set of Interrogatories and Plaintiffs' Request for Production—First Set are Exhibits A and B, respectively, as an Appendix to this Motion.¹ In response to many of Plaintiff Cantu's interrogatories, Defendant has responded by reference to documents, presumably pursuant FRCP 33(d). Defendant has also stated that it will produce documents both in response to those interrogatories and in response to Plaintiffs' requests for production. *See, generally, Exhibits A and B.*

Upon receipt of Defendant's responses, on January 8, 2014, Plaintiffs' counsel sent to Defendant's lead counsel, Mr. Gerald Drought, an email requesting that the documents Defendant agreed to produce be delivered by noon today, January 13, 2014. Because counsel for Defendant did not acknowledge or respond to that email, Plaintiffs' lawyers sent follow-up emails to Defendant's counsel on January 10, 2014 and on the morning of January 13, 2014. Those emails are Exhibit C as an Appendix to this Motion. Defendant has thus far not delivered the documents it has indicated it will produce, and its counsel has not responded to Plaintiffs' counsel's requests that it produce those documents.

¹ Defendant has provided a response to Plaintiff Cantu's Second Set of Interrogatories without reference to documents. Therefore, the Second Set of Interrogatories is not at issue in this motion.

With this Motion, Plaintiffs are simply seeking the documents that Defendant has agreed to produce so that the deposition may proceed on January 17.² Because (1) the deposition that the Plaintiffs noticed over one month ago is scheduled to take place on **January 17, 2014**, only four days from now and (2) the discovery deadline in this case is **February 28, 2014**, Plaintiffs have no choice but to file this Motion to Compel, and to seek expedited consideration and relief.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Court enter an Order compelling Defendant to produce all of the documents it has agreed to produce, and that Defendant deliver those documents to Mr. Philip Moss at his San Antonio address listed below by 5:00 p.m. on **January 14, 2014**.

Respectfully submitted,

By: /s/ Edmond S. Moreland, Jr.
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Counsel for Plaintiffs

² Consequently, Plaintiffs are in no way conceding the validity of any of the objections Defendant has asserted to any of their discovery requests, and they expressly reserve their right to seek further relief regarding the Defendant's responses.

Certificate of Service

The undersigned hereby certifies that, on this the 13th day of January, 2014, he submitted the foregoing instrument for filing through the Court's Case Management / Electronic Case Filing System. The following counsel of record shall be served with a true and correct copy of this pleading by operation of the Court's CM / ECF System:

Mr. Gerald T. Drought
Mr. Mathis B. Bishop
MARTIN & DROUGHT, P.C.
Bank of America Plaza, 25th Floor
300 Convent Street
San Antonio, Texas 78205

/s/ Edmond S. Moreland, Jr.
Edmond S. Moreland, Jr.

Certificate of Conference

The undersigned hereby certifies that, on January 8 and January 10, 2014, counsel for the Plaintiffs sent emails to counsel for Defendant requesting delivery, by noon on Monday, January 13, 2014, of the documents at issue in this Motion. He further certifies that this morning, January 13, 2014, he sent an email to counsel for Defendant reminding him of the request to receive responsive documents by noon on Monday, January 13, 2014. In that same email, the undersigned attempted to confer with Defendant's counsel regarding the merits of this Motion. Counsel for Defendant has not responded to any of these emails. Consequently, the undersigned has no choice but to submit this dispute to the Court for resolution.

/s/ Edmond S. Moreland, Jr.
Edmond S. Moreland, Jr.